

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HILDA L. SOLIS, SECRETARY
OF LABOR, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

JOHN J. KORESKO, V; JEANNE
BONNEY; PENN-MONT BENEFIT
SERVICES, INC.; KORESKO &
ASSOCIATES, P.C.; KORESKO
LAW FIRM, P.C.; COMMUNITY
TRUST COMPANY; PENN
PUBLIC TRUST; REGIONAL
EMPLOYERS ASSURANCE
LEAGUES VOLUNTARY
EMPLOYEES' BENEFICIARY
ASSOCIATION TRUST and
SINGLE EMPLOYER WELFARE
BENEFIT PLAN TRUST,

Defendants.

NO. 2:09-CV-00988-CDJ

HONORABLE C. DARNELL JONES, II

ELECTRONICALLY FILED

**ANSWER OF DEFENDANT FARMERS AND MERCHANTS TRUST
COMPANY OF CHAMBERSBURG, SUCCESSOR BY MERGER TO
COMMUNITY TRUST COMPANY**

NOW COMES, Defendant Farmers and Merchants Trust Company of Chambersburg, successor by merger to Community Trust Company (hereinafter, "F&M Trust"), by its attorneys, Rhoads & Sinon LLP, and files this Answer, stating as follows:

1. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied.

2. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied.

3. The allegations of this Paragraph relate to a party other than F&M Trust. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

4. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

5. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied.

6. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied.

7. After reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

PARTIES

8. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied.

9. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

10. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge

or information sufficient to form a belief as to the truth of these allegations and denies the same.

11. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

12. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

13. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

14. F&M Trust admits that CTC maintained an office in Camp Hill, Pennsylvania. The remaining allegations of this Paragraph are legal conclusions to which no response is required. To the extent a response is deemed appropriate, these allegations are denied. Further, this Paragraph references written agreements, each of which speak for itself.

15. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

16. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied.

PREFATORY ALLEGATIONS

General Background

17. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge

or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

18. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

19. The allegations of this Paragraph relate to a party other than F&M Trust. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

20. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the

truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

21. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

Death Benefits

22. After reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

23. This Paragraph references a written agreement that speaks for itself.

24. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied, except that CTC had no control over the accounts and was directed as to how to handle the accounts. Further, after

reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

25. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

26. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied, except that CTC had no control over the accounts and was directed as to how to handle the accounts. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

27. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied, except that CTC had no control over the accounts and was directed as to how to handle the accounts. Further, after

reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

28. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied, except that CTC had no control over the accounts and was directed as to how to handle the accounts. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

Income allegedly paid out of the F&M Trust to Defendants

29. After reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

30. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied, except that CTC was directed as to how to handle the accounts. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of

these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

31. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

32. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied, except that CTC was directed as to how to handle the accounts. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

Other alleged transfers out of the F&M Trust to Defendants

33. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied, except that CTC was directed as to how to

handle the accounts. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

34. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

35. The allegations of this Paragraph relate to a party other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

Stock and dividends

36. After reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

37. After reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

Lobbying expenses

38. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied, except that CTC was directed as to how to handle the accounts. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

39. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M

Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

Alleged need for an accounting by a master and new fiduciaries

40. It is admitted that a subpoena was served on CTC and that actions related to the subpoenas are pending in the Third Circuit Court of Appeals. It is denied that CTC interfered with the Department's investigation. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

41. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same.

42. The allegations of this Paragraph are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M

Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

ALLEGED VIOLATIONS

43. F&M Trust incorporates its responses to Paragraphs 1 through 42 above herein by reference.

Alleged Unlawful Transfer of Death Benefits to Defendants

44. The allegations of this Paragraph, and all subparts, relate to parties other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

Alleged Unlawful Transfer of Interest Income to Defendants

45. The allegations of this Paragraph, and all subparts, are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information

sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

Alleged Unlawful Transfers of Plan Assets to Defendants

46. The allegations of this Paragraph, and all subparts, relate to parties other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

Defendants' Alleged Unlawful Failure to Credit Stock and Dividends

47. The allegations of this Paragraph, and all subparts, relate to parties other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

Defendants' Alleged Unlawful Use of Plan Assets to Pay Lobbying Expenses

48. The allegations of this Paragraph, and all subparts, relate to parties other than F&M Trust and are legal conclusions to which no response is required. To the extent that a response is deemed appropriate, these allegations are denied. Further, after reasonable investigation, F&M Trust lacks knowledge or information sufficient to form a belief as to the truth of these allegations and denies the same. This Paragraph references a written agreement that speaks for itself.

WHEREFORE, Defendant, Farmers and Merchants Trust Company of Chambersburg, successor by merger to Community Trust Company, respectfully requests that the Court dismiss Plaintiff's Complaint and award it costs, attorneys' fees and any other relief deemed appropriate.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiff's claims are barred by the doctrine of estoppel.

Third Affirmative Defense

Plaintiff's claims are barred by the doctrine of laches.

Fourth Affirmative Defense

Plaintiff's claims are barred by release.

Fifth Affirmative Defense

Plaintiff's claims are barred by waiver.

Sixth Affirmative Defense

Plaintiff's claims are barred by the statute of limitations.

Seventh Affirmative Defense

As successor Trustee, F&M Trust is not liable for the claims asserted by Plaintiff.

Eighth Affirmative Defense

Plaintiff's claims fail and/or are barred in whole or in part because, to the extent they were Trustees, F&M Trust and CTC were directed Trustees who followed the proper instructions of others in accordance with the terms of the relevant documents.

Ninth Affirmative Defense

This Court lacks subject matter jurisdiction.

Tenth Affirmative Defense

The Plaintiff's claim is barred because the relief sought is not warranted and/or authorized by ERISA or other applicable law.

Eleventh Affirmative Defense

Restitution is not appropriate because F&M Trust has not been enriched at the expense of another party.

Twelfth Affirmative Defense

F&M Trust did not benefit from the alleged improper acts outlined in the Complaint.

Thirteenth Affirmative Defense

F&M Trust is not liable for any act of omission of any third party over which it had no authority or control.

Fourteenth Affirmative Defense

To the extent that Plaintiff's claims against F&M Trust are premised on 29 U.S.C. § 1105, F&M Trust is not liable for any alleged breaches by the alleged co-fiduciaries.

Fifteenth Affirmative Defense

F&M Trust did not knowingly participate in any alleged violation of ERISA.

Respectfully submitted,

RHOADS & SINON LLP

Date: June 29, 2009

By: /s/Timothy J. Nieman

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Attorneys for Defendant Farmers
and Merchants Trust Company of
Chambersburg, successor by merger
to Community Trust Company

CERTIFICATE OF SERVICE

It is hereby certified that on June 29, 2009, the foregoing document was transmitted electronically to the Court for filing and for electronic service, upon the following:

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Linda M. Henry, Esquire
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